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July 16, 2021

BY ECF ONLY

The Honorable Paul A. Crotty
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

7/21/2021

The request is granted

so ordered

*Paul A. Crotty
Clerk*

RE: *United States v. Fredy Luna, 18-cr-490 (PAC)*

Dear Judge Crotty:

On January 19, 2021, Your Honor granted Fredy Luna's request for the appointment of counsel to file a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). *See* Dkt. #125. I have conferred with Mr. Luna several times and monitored the conditions at Lompoc FCI where Mr. Luna is incarcerated. I have reviewed records from this prosecution and Mr. Luna's Presentence Report, as well as Mr. Luna's BOP medical records, disciplinary and educational records. Finally, I have had several conversations with Mr. Luna's family. In my professional judgment there is no non-frivolous basis for filing a motion for compassionate release. Mr. Luna appears, however, to meet the qualifications for release by the Bureau of Prisons to home confinement pursuant to the new rules implementing the CARES ACT issued by the Department of Justice on April 21, 2021. Mr. Luna concurs. Accordingly, Mr. Luna requests that his request for the appointment of counsel be expanded to assist him with a request for release on home confinement.

Briefly, on November 25, 2019, Your Honor sentenced Mr. Luna to 60 months imprisonment following his guilty plea to possession with intent to distribute approximately 12 kilograms of fentanyl and 4.3 kilograms of heroin in violation of 21 U.S.C. §§ 846, 841(b)(1)(A). Mr. Luna had no prior criminal record, and thus Your Honor concluded he was safety valve eligible and that the advisory Federal Sentencing Guidelines called for a sentence of 108-135 months. Your Honor varied downward and imposed a sentence of 60 months. Mr. Luna is incarcerated at Lompoc FCI.

Mr. Luna is 37 years old and a United States citizen. Before his arrest, Mr. Luna drank heavily and used a panoply of controlled substances. Mr. Luna has one disciplinary infraction

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more than one year ago and has completed the first phase of the BOP's Residential Drug and Alcohol Program. Mr. Luna received his second Pfizer vaccination against the corona virus on May 13, 2021. The BOP has determined that taking into consideration good time credits, Mr. Luna will be released from prison on September 16, 2022.

The BOP's April 21, 2021 memo lists criteria for release to home confinement.¹ These include that the inmate has no serious disciplinary record², a verifiable release plan, a non-violent offense of conviction, no detainer, a low PATTERN recidivism risk score, a low security risk, not engaged in violent conduct while in prison, and served 50% or more of their sentence. Mr. Luna appears to meet all of these criteria. Accordingly, Mr. Luna requests that my appointment be expanded to assist him with an application for release on home confinement.

Insofar as this request related to the scope of my appointment as CJA counsel, I have not consulted the Government for its position on this request.

Thank you for your consideration.

Respectfully submitted,



Jill R. Shellow

cc: Freddy Luna (by legal mail)
AUSA Michael Krouse (by email)

¹ The BOP April 13, 2021 memorandum is not referenced on the BOP website in its discussion of home confinement. The memorandum is, however, analyzed by the Federal Defender Services Office Training Division and is available at https://www.fd.org/sites/default/files/news/2021.4.13_bop_home_confinement_cares_memo.pdf.

² Inmates must not have had a series 300 or 400 incident report within the last 12 months. Mr. Luna's only disciplinary incident was for being in an unauthorized area, a series 300 violation, on June 2, 2020.